STATE OF MICHIGAN

COURT OF APPEALS

PAUL BRISSETTE, JR.,

Plaintiff-Appellant,

v

LANSING 53, INC. d/b/a WLAJ-TELEVISION and JOEL I. FERGUSON,

Defendant-Appellees.

UNPUBLISHED
June 11, 1999

No. 207525
Ingham Circuit Court
LC No. 96-084547 CK

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10), in this breach of contract action. Plaintiff also challenges an order denying his motion to amend his complaint to include a claim of promissory estoppel. We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition regarding plaintiff's breach of contract claim and his alternative quantum meruit claim. We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We conclude that the trial court properly granted summary disposition regarding plaintiff's breach of contract claim because the letter of understanding was not a contract for the sale or transfer of defendants' stock. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994).

First, the letter required the parties to enter into a definitive stock purchase agreement on or before July 15, 1996. Second, the letter clearly stated: (1) that it did not provide all essential terms of the contemplated transactions between the parties; (2) that the parties intended that they would not be obligated to complete the transaction unless the definitive agreement was executed by July 15, 1996; and (3) that if the definitive agreement was not executed and delivered by July 15, 1996, the letter would be of no further force or effect. Because the language of the letter is clear, and not susceptible to more than one interpretation, its construction is for the Court to decide as a matter of law. *Mt Carmel Hospital v Allstate Ins Co*, 194 Mich App 580, 588; 487 NW2d 849 (1992). The letter denotes that the intent of the parties was to negotiate the stock transfer and reduce it to a definitive agreement by July 15, 1996, and if this was not accomplished by that date, the letter would no longer be binding. We may

presume that business people are fully competent to enter into contracts and obligate themselves to perform in any manner they wish, and courts have no authority to rewrite such contracts. *WXON-TV, Inc v AC Nielsen Co*, 740 F Supp 1261, 1264 (ED Mich, 1990). Here, the letter was a contract to negotiate a future contract for the transfer of stock to plaintiff. *Socony-Vacuum Oil Co v Waldo*, 289 Mich 316, 322-323; 286 NW 630 (1939); *Heritage Broadcasting Co v Wilson Communications, Inc*, 170 Mich App 812, 819; 428 NW2d 784 (1988). While the letter did contain some terms regarding the stock transfer, it did not have all the material terms necessary to effect such a transfer.

Furthermore, the letter specifically stated that it did not contain all material terms. Accordingly, the letter was not enforceable as a contract for the sale of the stock, *Socony-Vacuum, supra* at 322-323, and without a contract, plaintiff could not establish a breach of contract. *Platsis v EF Hutton & Co, Inc*, 642 F Supp 1277, 1309 (WD Mich, 1986). We conclude that no record could be developed which would leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995). Accordingly, summary disposition was appropriate on the breach of contract claim.

Regarding plaintiff's quantum meruit claim, we conclude that the trial court properly granted summary disposition because a contract will be implied only if there is no express contract covering the same subject matter. *Barber v SMH, Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). While the letter of understanding was not a contract for the sale of stock, it was a contract to negotiate the sale. The letter satisfied all the essential elements of a valid contract, including that there were parties competent to contract and a proper subject matter. *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991).

Furthermore, there was consideration in that, in exchange for plaintiff's assistance in obtaining refinancing, defendants were to forbear from negotiating with any other investors. *Leja, supra* at 418. Also, the circumstances indicated that there was mutual assent on all of the material facts. *People v Swirles*, 218 Mich App 133, 135; 553 NW2d 357 (1996). Finally, the letter satisfied the element of mutuality of obligation, as neither party had the option of performing. *Reed v Citizens Ins Co of America*, 198 Mich App 443, 448-449; 499 NW2d 22 (1993). Thus, there was an express contract covering the services to be rendered by plaintiff, and it provided for compensation for the services rendered. We conclude that the services plaintiff provided were services contemplated by the letter, and that as the letter provided for payment regarding the services, plaintiff's quantum meruit claim was properly dismissed. *Barber, supra* at 375.

Defendant next argues that the trial court abused its discretion in denying plaintiff's motion to amend his complaint. We review a court's grant or denial of leave to amend for an abuse of discretion which resulted in injustice. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997); *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). Although the trial court's findings are not clear, it appears that the court denied plaintiff's motion based on delay and undue prejudice to defendants. Even assuming arguendo that the trial court abused its discretion in denying plaintiff's motion, however, plaintiff would not have been able to allege in this case a prima facie case of promissory estoppel, which requires "an actual, clear, and definite promise." *Charter Twp of Ypsilanti v General Motors Corp*, 201 Mich App 128, 134; 506 NW2d 556 (1993). The letter of

understanding between plaintiff and defendant evidenced a contract between the parties to negotiate a contract for the sale or transfer of the stock to plaintiff should the requirements of the letter be met. This was not a "clear" promise to sell plaintiff the stock upon which a promissory estoppel claim could be based. *Charter Twp of Ypsilanti, supra* at 134. Therefore, the amendment would have been futile and plaintiff suffered no prejudice by the trial court's ruling.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ Harold Hood